IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 20284 of 1999(M)

PETITIONER:

M.BEEMAKANNU, UPPER PRIMARY SCHOOL ASSISTANT, PONNARA SREEDHAR MEMORIAL UPPER PRIMARY SCHOOL, MUTTATHARA, THIRUVANANTHAPURAM. AT PRESENT WORKING AS U.P.S.A., VAZHAMUTTOM GOVERNMENT HIGH SCHOOL, VAZHAMUTTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY SECRETARY TO GOVERNMENT, GENERAL EDUCATION (H) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTION, KERALA, THIRUVANANTHAPURAM.**

3. **THE ASSISTANT EDUCATIONAL OFFICER, THIRUVANANTHAPURAM SOUTH.**

4. **THE MANAGER, PONNARA SREEDHARAN MEMORIAL UPPER PRIMARY SCHOOL, P.S.NAGAR, MUTTATHRA, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT.TRESA RANI. - R1 TO R3
SRI.N.NANDAKUMARA MENON,SC,TVM CORPN. - R4

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.20284/1999

ORDER ON CMP. NO.33481/1999 NO.20284/1999

DISMISSED

23.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.SC(2) 91812/94/DPI DT. 9.5.94 OF THE 2ND RESPONDENT ISSUED TO THE 4TH RESPONDENT AND OTHERS.

EXT.P2:- COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 94-95 ISSUED BY THE 3RD RESPONDENT VIDE NO.D.DIS B.3595/94 DT. 15.7.94.

EXT.P3:- COPY OF THE ORDER, G.O.(RT) NO.777/G.EDN. DT. 5.3.97 OF THE IST RESPONDENT, REFERRED TO IN THE ORIGINAL PETITION.

EXT.P4:- COPY OF THE ORDER G.O. (MS) NO.126/96/G.EDN. DT. 25.3.96 OF THE IST RESPONDENT REFERRED TO IN THE ORIGINAL PETITION.

EXT.P5:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER FOR EDUCATION, KERALA, TRIVANDRUM, ON 10.7.98.

EXT.P6:- COPY OF THE COMMUNICATION NO.233/H1/99/ G.EDN. DT. 6.4.99 RECEIVED BY THE PETITIONER FROM IST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.20284 OF 1999

Dated this the 23rd day of October, 2007

JUDGMENT

Going by the materials on record, including the counter affidavit on behalf of the first respondent, the petitioner has continued service from 4.6.1990 as UPSA in Ponnara Sreedhar Memorial U.P. School, and that with the passage of time, schools in that area faced the situation where there was en masse drop outs among pupils and consequential division fall. The en masse fall in the pupil strength in the schools were due to eviction and migration of local people from the area notified for Trivandrum Aerodrome expansion, which is a fact reflected even in Ext.P3. As a consequence, the Government took a decision that de hors the rules that govern, as a special case, the teachers who would be rendered surplus on staff fixation on the basis of such depleting pupil strength, would be treated as entitled to protection. This means that they were not liable to go out of service. It is not in dispute that following Ext.P3, the petitioner had been retained. The issue is whether she was entitled to be

paid the emoluments during the period for which she could have been treated as surplus on the basis of staff fixation orders. As already noticed, Ext.P3 has been issued holding that as a special case, the petitioner was entitled to be protected. Such protection was extended. This means that the Government recognised the fundamental fact that the petitioner had been working in the institution, though was liable to be identified as a surplus hand and retrenched as a consequence of staff fixation. In view of the decision of the Government, it goes without saying that a teacher. who has spent her energy by working as such, was entitled to be paid her emoluments.

For the foregoing reasons, this writ petition succeeds. The same is accordingly allowed declaring that the petitioner is entitled to salary and all further benefits for the period from 15.7.1994 to 23.7.1997 while she remained as a UPSA in P.S.M. U.P.School and following which, Ext.P3 order protecting her was issued. Such amounts shall be released to her within an outer limit of three months from the date of receipt of a copy of this

judgment. The claim for interest is refused. As a consequence of the declaration granted above, the decision contained in the impugned Ext.P6 is quashed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

Page numbers

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.20284 OF 1999

JUDGMENT

23rd OCTOBER, 2007.

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